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JIGJr: 01-03

Paper 13

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JAN 31 2003

OFFICE OF PETITIONS

In re Application of
Rabello
Application No. 09/757,855
Filed: 10 October, 2001
Attorney Docket No. (None)

DECISION ON PETITION

This is the decision on the petition filed 30 January, 2003, to revive the above-identified application under 37 C.F.R. §1.137(b).¹

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.²

BACKGROUND

The record indicates that:

- the instant application was filed on 10 January, 2001;
- the application became abandoned for failure to reply timely and properly to the Formalities Notice (to file the Abstract on a separate page) mailed on 23 February, 2001, and due (absent extension of time) on or before 23 April, 2001;
- Petitioner indicated in a response filed via FAX on 16 April, 2001, that she thought she had

¹ Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

² For completeness of the record, it is noted at this point that, on 17 and 24 October, 2002, Petitioner filed a petition (with credit card fee authorization) seeking to revive the instant application as abandoned due to unavoidable delay under 37 C.F.R. §1.137(a) or have the holding of abandonment withdrawn under 37 C.F.R. §1.181.

filed the Abstract on a separate page, and in support filed a copy of her original--however, that document clearly indicated that the Abstract was not set out on a separate page, and no other document was filed to satisfy the response to the Formalities Notice;

- therefore, on 25 May, 2001, the Office mailed a Notice of Incomplete Reply, which Notice Petitioner indicates she did not receive, although it was properly addressed;
- Notice of Abandonment was mailed 28 August, 2002;
- on 9 September, 2002, Petitioner Noticed the Office as to a change of her address;³
- on 17 and 24 October, 2002, Petitioner filed (with a new page of Abstract set forth on a separate page) a petition (with credit card fee authorization) seeking to revive the instant application as abandoned due to unavoidable delay under 37 C.F.R. §1.137(a) or have the holding of abandonment withdrawn under 37 C.F.R. §1.181--it is noted that in the supplementary filing of 30 January, 2003, Petitioner asks that these petitions be withdrawn;⁴
- on 30 January, Petitioner filed the instant petition (with credit card fee authorization) under 37 C.F.R. §1.137(b), and--having previously satisfied the "reply" requirement--now also satisfied the "statement" requirement.

Accordingly, in view of Petitioner's satisfaction of the "reply" and statement requirements, the petition to revive as to unintentional delay under 37 C.F.R. §1.137(b) is **granted** and the petitions under 37 C.F.R. §§1.137(a) and 1.181 are **dismissed as withdrawn**.

The instant application is being forwarded to OIPE to complete the initial review before being forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



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Senior Attorney
Office of Petitions

³ Also, about this time, Petitioner Noticed the Office that the filing date of the application was now incorrectly reflected on the Filing Receipt as 11 January, 2001, although Petitioner's allegation of filing on 10 January, 2001, is consistent with the deposit "date in" with the US Postal Service Express Mail. That matter is addressed under separate cover.

⁴ Although Petitioner mis-cited the authority for these petitions as "37 C.F.R. [§§]1.181, 1.182(a), or 182(b)," nonetheless the intent of the filing is clear.



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OFFICE OF PETITIONS

In re Application of
Rabello :
Application No. 09/757,855 : **DECISION ON PETITION**
Filed: 10 October, 2001 :
Attorney Docket No. (None) :

This is the decision on the petition filed on 16 April, 2001, and again on 10 September, 2002, and supplemented on 24 October, 2002, and 30 January, 2003, to correct a filing receipt and therefore considered under 37 C.F.R. §1.10.¹

The Office regrets the delay in addressing this matter.

The petition under 37 C.F.R. §1.10 is **GRANTED**.²

¹The regulations at 37 C.F.R. §1.10 provide in pertinent part:
§ 1.10 Filing of papers and fees by "Express Mail."

(c) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

[48 Fed. Reg. 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 Fed. Reg. 4285, Jan. 31, 1983, paras. (a) & (c), 49 Fed. Reg. 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 Fed. Reg. 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

² For completeness of the record, it is noted at this point that, on 17 and 24 October, 2002, Petitioner filed a petition (with credit card fee authorization) seeking to revive the instant application as abandoned due to unavoidable delay under 37 C.F.R. §1.137(a) or have the holding of abandonment withdrawn under 37 C.F.R. §1.181 in connection with an incomplete response to a Formalities Notice. That matter is addressed under separate cover.

The application was and is entitled to a filing date of 10 January, 2001, under the provisions of 37 C.F.R. §1.10. The petition fee is waived.

BACKGROUND

The record indicates that:

- Petitioner alleges that this nonprovisional application was filed via Express Mail (US Postal Service (USPS) Express Mail No. EF272391125US) on 10 January, 2001;
- Petitioner received both a her receipt card and filing receipt setting forth the date of filing as 11 January, 2001, and Petitioner first requested on 16 April (letter dated 13 April), 2001, a corrected filing receipt;
- in companion filings of 10 September and 24 October, 2002, Petitioner further advanced here request for a corrected filing receipt;
- the instant petitions are supported by statements by Counsel Marcia A. Devon (Reg. No. 31,947), as well as USPS documents including the USPS Express Mail No. EF272391125US bearing the "date in" of 10 January, 2001 (time: 8:52 a.m.), and a copy of the application transmittal for the instant application bearing USPS Express Mail No. EF272391125US.

Therefore, as to the instant nonprovisional application, Application No. 09/757,855, the Office of Initial Patent Examination is specifically instructed to:

- assign a filing date of 10 January, 2001; and
- issue a filing receipt specifying the filing date as that of 10 January, 2001.

The instant application is being forwarded to OIPE to be handled as set forth above before being forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



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